

REMARKS

Claims 1-8 are pending. Claims 9-16 were previously canceled in response to a restriction requirement. No claims are amended herein. The Applicant respectfully traverses the rejections and requests allowance of claims 1-8 at the Examiner's earliest convenience.

35 U.S.C. § 103(a) Rejection

Claims 1-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,236,950 (Savage). For at least the reasons stated below, the Applicant respectfully traverses the rejection.

The Office Action cites Savage as disclosing a consolidated billing method. However, the Applicant respectfully contends that Savage is an improper reference. In order to use a reference in a 35 U.S.C. § 103(a) rejection, the reference must be a valid 35 U.S.C. § 102 reference (MPEP § 2141.01(I)). MPEP § 706.02(a) states “In order to determine which section of 35 U.S.C. 102 applies, the effective filing date of the application must be determined and compared with the date of the reference.” Savage has a priority date of October 29, 1998. The Applicant respectfully notes that the present application has a priority date of September 17, 1998. The priority date of Savage is *after* the filing date of the Application. Thus, Savage is an improper 35 U.S.C. § 102 reference and cannot be used in a 35 U.S.C. § 103(a) rejection. Therefore, the Applicant respectfully contends that claims 1-8 are patentable over the cited reference.

In light of the discussion above, the Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of claims 1-8.

CONCLUSION

Based on the above remarks, the Applicant submits that the claims in their present form are allowable. Additional reasons in support of patentability exist, but such reasons are omitted in the interests of clarity and brevity. The Applicant respectfully requests allowance of the claims at the Examiner's earliest convenience.

The Applicant believes no fees are due with respect to this filing. However, should the Office determine fees are necessary, the Office is hereby authorized to charge Deposit Account No. 210765, accordingly.

Respectfully submitted,

/David J. Bovitz/
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